In cross-examination he said "they phoned up that it was for Mrs. Smith.....The manager spoke in Malay asking me to send over a bottle of whisky. I asked him for whom it was. He replied that it was for Tuan Smith."

This witness was confronted with Exhibit D which he did not explain and the Magistrate appears not to have accepted his evidence as to his enquiry for whom the whisky was required and the answer that it was for Tuan Smith.

It is to be observed that the appellant does not mention this conversation; Exhibit D makes no mention of Mrs. Smith's name; and the transaction as between M. S. Ally and Company and Caldbeck Macgregor was for cash so that there would appear to have been no point in the enquiry. I think the Magistrate was right in not accepting this evidence.

Now as between Mrs. Smith and the appellant it is not suggested that she was interested as to how or where they procured the bottle of whisky she required so long as they provided a bottle. In my view this they did by purchasing one for cash from Messrs Caldbeck Macgregor and Company, which they in turn sold or proposed to sell to Mrs. Smith on credit in exactly the same manner as they sold to her on credit the bottle of plums.

This view is supported by Exhibit B which reads "Bought of." To illustrate this let us consider to whom the bottle of whisky belonged while in the possession of the appellant. Suppose that bottle had been broken by some mischance could the appellant have said to Mrs. Smith "we much regret that your bottle of whisky has been broken" and, if they had, would Mrs. Smith have paid for the broken bottle? I think not.

Again, what was the appellant's own view of the matter at that time? Exhibit B was prepared by him or under his instructions.

He there states that two items have been "bought of" M. S. Ally and Company by Mrs. Smith, and the price is debited to her. If Mrs. Smith bought then M. S. Ally and Company sold.

The price is debited and no distinction is drawn between the article which they admittedly sold from their stock and the bottle of whisky.

If the view of the appellant before the Assistant Superintendent called upon him was that he had bought the whisky as agent of Mrs. Smith one would have expected him to have debited her with this item as a disbursement.

If Messrs. Caldbeck Macgregor had regarded the transaction as a sale by them to Mrs. Smith, would not they have prepared an invoice addressed to Mrs. Smith c o M. S. Ally and Company or something of that sort?

Counsel for the appellant pointed to the fact that M. S. Ally and Company were not shown to have made any profit upon this transaction, and urged this as a cogent reason for holding that the transaction as between M. S. Ally and Company and Mrs. Smith was not a sale. This is fallacious. Traders doubtless expect to make profits upon the purchase and sale of goods, but I apprehend during this period of trade depression many traders have sold goods at a loss, and the transaction does not cease to be a sale because the seller fails to make profit.

A better test to be applied is this. Suppose the intervention of the Assistant Superintendent had not occurred and the goods had been delivered to Mrs. Smith and that later she had failed to pay M. S. Ally and Company at the end of the month and they had sued her to recover what form would the action have taken? I think it plain from Exhibit B that they would have sued for the price of goods sold and delivered.

I agree with the learned Magistrate in his view of the facts namely that the transaction was a cash sale of the bottle of whisky by Messrs. Caldbeck Macgregor to Messrs. M. S. Ally and Company, who then appropriated that bottle to Mrs. Smith's order and that the appellant intended to sell the bottle to Mrs. Smith and that the property in the bottle passed from Messrs. Caldbeck Macgregor to M. S. Ally, and had not passed to Mrs. Smith at the time of the visit of the Assistant Superintendent but would have passed to her upon the delivering of the bottle to her.

I agree therefore that the appellant was rightly convicted of an attempt to sell this bottle of whisky to Mrs. Smith.

There is one small matter which was not argued but which occurs to me.

The Magistrate ordered the destruction of the bottle of whisky and I think this was wrong. Under Section 67 of the Enactment his power is to order a forfeiture of any articles seized, and not their destruction.

This appeal will stand dismissed and subject to the slight variation of the order for dest uction to one of forfeiture the conviction a l sentence are affirmed.

Appeal dismissed.

JOHORE.

[APPELLATE CIVIL JURISDICTION]

K. A. R. S. T. ARUNASALAM CHETTIAR ..... **Plaintiff (Appellant)**

vs.

ABDUL RAHMAN BIN SULIEMAN and ANOR. ..... **Defendants**

and

TAN BAK CHAY..... **Objector (Respondent)**

[JOHORE CIVIL APPEAL No. 2 of 1931]

[BATU PAHAT CIVIL SUIT No. 76 of 1930]

Practice—jurisdiction—attachment of property—Objector's inquiry—Registrar's decision—Civil Procedure Code, Ss.2, 279, 284 and 614; Courts Enactment, Ss.7 and 73, discussed.

On an enquiry made on the summons of an objector to the attachment of property under S. 282 of the Johore

Civil Procedure Code the Registrar's decision is final and conclusive.

APPEAL from the Judgment of Thorne, J. delivered on the 16th April, 1931. The appeal which was heard before Sproule, Ag. C.J., and Simpson, J. on the 10th day of August 1931 raised the question as to the finality of the Registrar's decision on the hearing of an objector's summons under S. 282 of the Johore Civil Procedure Code.

Williamson (*Osborne-Jones* with him), for Appellant.

G. C. Griffith-Williams, for the Respondent.

Cur. Ad. Vult.

29—8—1931.

SPROULE, AG. C.J.—Defendant 1 was registered owner of a piece of land at Batu Pahat. He had many debts, and three attachments by judgment creditors were registered against his title.

Tan Bak Chay, the objector, agreed with Defendant 1 to buy this land and pay off these three judgment debts. Defendant 1 signed a transfer to him on 12th October 1930. Its tender for registration was delayed until 15th October pending the discharge of the three attachments.

In the meantime, Plaintiff who had signed judgment against defendant 1 on a promissory note on 20th September 1930 applied for and obtained an attachment against the same land on 8th October 1930. The order of attachment is in the nature of a prohibition, restraining a judgment debtor from transferring or assigning his interest in the immoveable property attached.

The law requires (section 275, Civil Procedure Code) that copies of the order shall be affixed on a conspicuous part of the property and on a conspicuous part of the Court house. It also has to be served upon the Collector of Land Revenue in a case like ours, and therefore registered. When all this has been done, any private transfer of the property contrary to the attachment is void as against the execution creditor see section 278.

On the afternoon of 15th October 1930 the Plaintiff's attachment and the Objector's transfer were both presented for registration, but the attachment was given priority.

The Objector took out a summons of objection. Section 279 directs that the Court should then proceed to investigate the objection, treating the objector as a party to the suit.

The summons was in fact heard and investigated before the Asst. Registrar of the Supreme Court at Batu Pahat. This officer took evidence and gave a considered decision on 30th March 1931. He held that Plaintiff had duly posted the order of attachment on the land and at the Court, and I respectfully agree with Thorne J., that in so doing the Assistant Registrar decided against the weight of evidence.

The Assistant Registrar also held that the attachment was good as against the transfer to the Objector. Once more I agree with Thorne J. that this decision was clearly wrong. A judgment creditor can only attach what his debtor has and his rights are merely to stand in the shoes of the defendant with no added equities in his favour. In our case Defendant 1 had received good value for his land and had signed a transfer in the Objector's favour on 12th October 1930. Defendant 1 on 15th October 1930 had no interest whatsoever in the land and therefore there was nothing Plaintiff could seize or attach. Defendant 1 on 15th October 1930 could not oppose the registration of his transfer to the objector and therefore Plaintiff standing in Defendant 1's shoes, could not oppose it, either. The law is clear and has received local recognition and endorsement in the Penang case of *Ng Boo Bee* v. *Khaw Joo Choe*, 14 S.S.L.R. 90 and the K.L. case of *Boase* v. *Cluny Rubber Estates, Ltd. & ors.* 2 F.M.S.L.R. 130.

From this hopelessly wrong decision of the Assistant Registrar, the Objector appealed to Thorne J., who set it aside on 22nd April 1931. Appeal was entered and for that purpose the learned Judge wrote grounds of his judgment which were filed on 17th May 1931.

In the course of these written grounds the learned judge took a point which had never been raised or argued at the trial, and seems to have then entirely escaped the notice of all concerned. He wrote:

> It is not, perhaps, free from doubt, but my view is that I had jurisdiction to hear the appeal against the order of the Registrar, since the Court is the Court of a Judge.

Appellant's Counsel has seized upon this point, and relies before us upon the sole ground that the Assistant Registrar's judgment was conclusive, that no appeal to the Judge lay, that the Registrar's decision, right or wrong, was final and that the Objector's true and only remedy is to bring a fresh suit to establish the right which he claims. He insists, moreover, that the forum of the Assistant Registrar was chosen by the objector, who is therefore not entitled now to question its jurisdiction.

The Assistant Registrar's decision purported to have been made under section 282 of the Civil Procedure Code and appellant's reliance was based upon section 284 which provides that:

> The party against whom an order under section 281, 282 or 283 is made may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit if any, the order shall be conclusive.

I pause to remark that legal provision to render the decision of an interpleader issue conclusive and non-appealable except by leave, is no novelty. It exists in the Colony and in England, and is inspired by the wise policy of discouraging multiplicity of litigation. I cannot pretend, however, to admire a system which renders a decision final, yet gives leave to bring a new suit which may go from appeal to appeal in the endeavour to discover whether that is final and conclusive or not which the law has already declared to be final and conclusive.

Supposing, however, that the Appellant is right, and that the Assistant Registrar's decision was conclusive against the Objector, and therefore no appeal lay to Thorne J., at all, then it is clear that the law however objectionable, compels us to restore the Assistant Registrar's decision however wrong. And I think, moreover, that the Appellant is right in arguing that the Objector having submitted to the jurisdiction of the Assistant Registrar, cannot afterwards question it.

The Respondent's answer is, as to the second point, that he knew or believed when he went to the Assistant Registrar, that an appeal lay from him to the Judge: and that in fact, the Assistant Registrar's order was not conclusive, having regard to the manner in which his jurisdiction was created by law.

It becomes necessary therefore, to examine the legislation bearing upon the matter.

In the beginning, the Civil Procedure Code (see section 614) discouraged delegation to Registrars of any but merely ministerial powers. Two exceptions were made by section 614. A registrar was not disqualified from being a referee or commissioner to examine or adjust accounts, such as the Court was empowered to appoint under section 383 of the Code and section 614 sub-section 3 allowed him to be appointed by the Court to record the *de bene esse* examination of a witness.

Section 614 sub-section (ii) empowered the Judicial Commissioners (now Judges) to make rules defining what were to be the non-judicial or quasi-judicial power of the Registrars. But, of course, that did not empower them to give any complete judicial powers to the Registrar. I do not know what "quasi-judicial" means and I do not propose to try to find out. It is quite clear that except for adjustment of an account, which is really the function of an auditor, the Registrar was debarred from adjudicating and giving a decision which involved the determination of any cause or issue.

Section 614 was taken from the old F.M.S. Code of 1902 and re-enacted in the Code of 1918. It is F.M.S. Enactment 15 of 1918 and became the law in Johore in that year.

Then in 1920, Johore passed its own Courts Enactment. Till then, the Registrar, as pointed out, could only perform ministerial functions, and only such ministerial functions as were to be defined by Judge-made rules under section 614 of the Civil Procedure Code. But the Courts Enactment of 1920 altered that, Section 7(ii) gave new and wide judicial powers to the Registrars. To mention some, contested probates in estates up to $500/- in value were left to their adjudication: and section 7(ii) (c) gave them power to make

> "all such orders as may be necessary in such matters as may from time to time be authorised by Rules made under section 73....."

Section 7(iii), however, further provided that "any person aggrieved by any order—made or done under paragraph (c) may appeal to a Judge".....

Section 7(ii) (c) therefore conferred jurisdiction on the Registrars to make all orders which rules under section 73 might authorise.

Section 73 (1) (a) authorised the Johore Judge, with the approval of the State Secretary, to make rules.

> (a) for regulating the practice and procedure of all the Courts.

If you read that with section 7(ii)(c), I think it was clearly intended to increase the jurisdiction of the Registrars to the extent that the Judge-made rules of practice and procedure might authorise. There was therefore a clear delegation to the rule-making authority of power to confer increased jurisdiction upon the Registrars by rules made under section 73 (i)(a).

Rules were made accordingly and published as law in the Johore Government Gazette of 23rd August 1922. I fear they are a lamentable piece of drafting, but we must give such effect to them as we can.

Rule 2 confers extended jurisdiction upon the Registrar as the Judge was empowered to do by section 73 (i) (a), when read with section 7. Yet the rule begins:—

> "The following acts are declared to be non-judicial or quasi-judicial acts within the meaning of section 614 of the Code and shall ordinarily be performed by the Registrar.

and item (f) in the list following says:—

> "(f) execution of decrees, chapter XXII. sections. 221 to 317 inclusive."

Now those sections include the hearing and decision of interpleader issues between rival claimants to land, as in our case under section 282. Such a decision is very clearly neither a non-judicial nor a quasi-judicial act, but a judicial act of weight and possibly great complexity. The Rule-making authority was empowered to extend the Registrar's jurisdiction to the extent of exercising such purely judicial powers: but it was certainly not empowered to call these non-judicial or quasi-judicial or ministerial acts, because they were not.

The invocation of Section 614 was not only totally misconceived but it was totally unnecessary. The rules were made under section 73, reinforced by section 7 of the Courts Enactment, which empowered "The Judge" that is, the Johore Judge, to make rules. It is very doubtful whether under section 614 of the Civil Procedure Code the Johore Judge had any power to make rules at all. Any delegated power to make rules is to be strictly construed: and the effect of sections 614 and 615 of the Civil Procedure Code, taken over bodily from the Federated Malay States, gave the rule-making power to "any two judicial Commisioners, of which the Chief Judicial Commissioner shall be one." The Code is adopted *mutatis mutandis*, but how under any reasonably strict construction, can you read "the Judge" as being the same as two Judicial Commissioners of whom the Chief Judicial Commissioner shall be one?

I think for these reasons that we can only give effect to Rule (2) (f) by deleting the words

> "are declared to be non-judicial or quasi-judicial acts within section 614 of the Code and....."

as having no sense at all and being mere surplusage of a misleading and very inartistic nature.

The Rule would then read,

> "The following acts shall ordinarily be performed by the Registrar....."
> (*f*) execution of decrees, Chapter XXII sections 221 to 317 inclusive."

I hold then that the jurisdiction to decide an interpleader issue or Objector's summons under section 282, formerly exercisable by the Court alone, that is the Court of a Judge, was made exercisable by the Registrar also (however inartistically this was enacted) by the Rules of August, 1922.

Then as to the finality of such a decision, we are assured by section 17(d) of the Courts Enactment that if the decision is made by the Judge, no appeal can be taken to the Court of Appeal. But, indeed, no such assurance was necessary, since section 284 speaks for itself, at any rate as to a judgment or order by the Court of a Judge. But we are left with the question whether a judgment or order by the Registrar under section 282 is also conclusive and beyond ordinary appeal to the Judge: and it is not an easy question.

Section 7 (iii) of the Courts Enactment might appear to saddle the power to make rules for conferring extended jurisdiction upon the Registrar with a proviso or condition.

I requote the revevant portions of sections 7(ii)(c) and 7(iii) in the light of that statement

> "The Registrar.....7 (ii) (c) may make all..... orders———in such matters as may.....be authorised by Rules made under section 73..... (iii) Any person aggrieved by any order made .....under paragraph (c).....may appeal to the Judge."

I have given much thought to this matter and find it of extreme difficulty. It might be said that greater confidence was intended by the Code to be placed in a Judge than in a Registrar, whose powers the Court restricted to certain non-judicial or quasi-judicial acts. That is likely enough, and there would be no real inconsistency, but for one thing, in reading section 284 as making the order conclusive, if made by a Judge, but appealable, if made by a Registrar.

The one difficulty, however, is that there is the curious provision giving liberty to the aggrieved party to bring a new suit. Can he do so and yet appeal from a Registrar's order from Court to Court and at the same time pursue his suit? That would make this absurd section even more absurd, its only present virtue being that if a new suit be not brought, then at least the order made upon the objection summons is final. There would be no finality if he could both pursue a new suit and also pursue an appeal from the order and juggle with his two remedies at once.

I construe section 284 as giving a new and special remedy (ie. a new suit) to take the place of an appeal, and hold that this special and strictly unusual provision was not repealed by the general provisions for appeal from Registrar to Judge, given by section 7(iii), under the principle *specialia generalibus non abrogantur.*

For these reasons I think that the objector has misconceived his remedy and should have brought a new suit to establish his claim, and that unless and until he does so, the Registrar's order is final and conclusive.

The appeal therefore must be allowed. As to costs, the logical way of treating them appears to be that since Plaintiff rightly resorted to the Registrar, he should have the costs of that hearing: and the costs of appeal to us must follow the event of the appeal: but regarding the costs of the hearing before Thorne J., I think each party should bear his own.

SIMPSON, J.—This Appeal raises a question of practice and jurisdiction.

The Plaintiff (hereafter referred to as the Judgment Creditor) obtained a judgment against the Defendant in the Batu Pahat Court for $1,400 – and costs. The judgment being unsatisfied, the Judgment Creditor obtained a Prohibition Order in respect of certain land standing in the Defendant's name in the Mukim Register, which land the Defendant had already sold to Tan Bak Chay (hereafter referred to as the Objector) but the purchase had not been completed by registered transfer.

The procedure on objection to attachment of property is laid down in section 279 *et seqq.* of the Civil Procedure Code. The objection in this case was heard by Mr. Bird, the Assistant Registrar of the Court at Batu Pahat (hereafter referred to as the Registrar). The Registrar decided under section 282 against the Objector who appealed to the Judge. Thorne J. heard the appeal from the Registrar and held in the Objector's favour, but he himself suggested in his judgment the point argued before the Court of Appeal which had not been taken before him. The Judgment Creditor appealed to the Court of Appeal.

Section 284 of the Civil Procedure Code is as follows:—

> "The party against whom an order under Section 281, 282 or 283 is made may institute a suit to establish the right which he claims to the property in dispute, but subject to the result of such suit, if any, the order shall be conclusive."

Before the Court of Appeal Counsel for the Judgment Creditor (Appellant) contended that the Registrar was "the Court" within the meaning of section 282 and that there was therefore a conclusive decision in his favour, subject to any suit brought by the Objector under the concluding words of Section 284.

Counsel for the Objector (Respondent) argued that the Order of "the Court" within the meaning of Section 284 was that of the Judge and was conclusive in his the Objector's favour.

It was also argued for the Judgment creditor that if his contention as to "the Court" was wrong, he was nevertheless entitled to succeed because in that case the Objector had taken the wrong procedure before the wrong tribunal in the first instance and therefore was wrong *ab initio.* This line of argument would however appear to be of little value because, if the objection came from the wrong tribunal, the decision would

be nugatory and the objection would presumably still remain in existence and without effective decision upon it.

If the Registrar had no jurisdiction the decision of the Judge on appeal would not, in my opinion, be as effective as a decision by him in the first instance because it is clear from sections 279, 280 and 281 that the Court deciding the objection should be the one also to investigate it and hear the evidence.

It was clear that, on either line of argument, the Court of Appeal had no jurisdiction to decide the dispute on its merits, upon which no argument was addressed to the Court, and that the Court of Appeal could only decide which decision, that of the Registrar or that of the Judge, was conclusive within section 284.

The expression "The Court" used in the sections mentioned is not defined in the Code, but "Judge" is defined in Section 2 as "the presiding officer of a Court." Section 614 provides that the Registrar may do any non-judicial or quasi-judicial act which the Code requires to be done by a Judge and that the Judicial Commissioners may by Rules declare what shall be deemed to be non-judicial and quasi-judicial acts.

The Civil Procedure Code of the Federated Malay States is in force in Johore by virtue of Section 74(1) of the Johore Courts Enactment 1920, which provides that questions arising in proceedings shall be dealt with and determined "according to the principles, procedure and practice, so far as the same may be applicable, laid down" in the Federated Malay States Civil Procedure Code (already cited) but subject to the provisions of the Courts Enactment itself and all other Enactments passed by the Council of State.

Section 78 of the Johore Courts Enactment provides for the making of the Rules by the Judge, with the approval of the State Secretary, for regularising the practice and procedure of the Court. Rules were made in 1922 which purport to have been passed under section 73 and by Rule 2 to define "Non-judicial" and "quasi-judicial" acts which may be done by the Registrar so as to include matters coming under sections 279 to 285 of the Civil Procedure Code.

The questions arise whether Rules made by the Judge and the State Secretary under the Courts Enactment (Section 73) can be valid in laying down matters regarding which the Civil Procedure Code by section 614 (ii) provides that Rules should be made by the Judicial Commissioners alone and whether the definition of "non-judicial" and "quasi-judicial" acts of the Registrar is a matter of practice and procedure. As to this it appears to me to be quite effective, though, peculiar, in Rules to define things as being what they are not, when there is clear power to arrive at the same result by direct means, as is the case here. It appears to me that in order to make Section 614 of the Civil Procedure Code applicable in Johore it is necessary to read "Judge" for "Judicial Commissioners" and to insert a provision that the Rules should be made by the Judge "with the approval of the State Secretary" which is part of the law of Johore regarding the rule-making power of the Judge.

By Section 7(ii)(c) of the Courts Enactment Registrars are empowered to make orders in all matters authorised by Rules under section 73, which shows that Rules giving jurisdiction to Registrars are contemplated under section 73. I am therefore of opinion that the Judge with the approval of the State Secretary can make Rules for the purpose of section 614(2) of the Code.

It is true that the Rules purport to have been made under sections 73 of the Courts Enactment, but as the Civil Procedure Code of the Federated Malay States is only law in Johore by virtue of the Johore Courts Enactment and expressly subject its provisions, it is proper that the Rules should be made under the latter Enactment.

I am therefore of opinion that the Registrar had power to decide the objection in this case and that his decision is final under section 284 of the code, notwithstanding the provision for appeal to the Judge in section 7(iii) of the Courts Enactment which is of general application and must give way to a provision that the Registrar's decision in any particular matter is to be conclusive. It can of course be argued that the Civil Procedure Code is only in force "subject to the provisions" of the Courts Enactment, but I do not consider that this is sufficient to make it necessary, much less reasonable, to read "the "Court" in section 279 *et seqq.* as meaning "the Registrar, and also the Judge in the event of an appeal," which incidentally would enable a litigant, unsuccessful on appeal, to commence a new suit under section 284 for the decision of the same point to be heard by the very Judge who had already decided against him.

The objection must therefore be treated as disallowed, as was decided by the Registrar. I reach this view with considerable reluctance because I agree with Thorne J., that the Registrar's decision was wrong, (it is contrary to the decisions of the two Courts of Appeal in *Ngo Boo Bee* v. *Khaw Joo Choe*, 14 S.S.L.R. 90 and *Boase* v. *Cluny Rubber Estate Ltd.*, 2 F.M.S.L.R. 130) and also because it seems absurd that, in order get such a matter before a Judge, the cumbersome and expensive course of instituting a suit is necessary, instead of the simple and inexpensive procedure of appealing from the Registrar to the Judge. Moreover, the Suit may be delayed, provided it is eventually brought within the appropriate limitation period.

I agree with the Order of the President of the Court as to Costs.

Appeal allowed.

Solicitors for the Appellant—
D. G. Osborne-Jones.

Solicitors for the Respondents—
Shelly-Thompson and Demuth.